

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

Defendant has moved to suppress ([filing 55](#)) a videotape and any other evidence obtained by private investigator Paul Sheckler (“Sheckler”). Defendant argues that Sheckler violated federal wiretapping laws by secretly recording his meeting with Defendant while conducting unlicensed private detective activities in Kansas. Defendant claims that the exception found in 18 U.S.C. § 2511(2)(d) is inapplicable because Sheckler violated [Kan. Stat. Ann. § 75-7b02](#) and [Kan. Stat. Ann. § 21-6101](#) by recording the conversation. Section 2511(2)(d) provides:

It shall not be unlawful under this chapter for a person not acting under color of law to intercept a wire, oral, or electronic communication where such person is a party to the communication or where one of the parties to the communication has given prior consent to such interception *unless such communication is intercepted for the purpose of committing any criminal or tortious act in violation of the Constitution or laws of the United States or of any State.*

18 U.S.C. § 2511(2)(d) (emphasis added).

Having reviewed the law on this matter, the Court concludes that additional briefing is necessary. The Court is interested in the parties' respective positions as to how the holdings in *U.S. v. Phillips*, 540 F.2d 319 (8th Cir. 1976) and *United States v. Vest*, 639 F. Supp. 899 (D. Mass. 1986) impact the suppression issue presented here. In particular, the Court seeks further clarification as to the applicability of Section 2511(2)(d) in light of the

allegation that the subject recording was made for an unlawful purpose.

Accordingly,

IT IS ORDERED:

1. The Government shall submit a brief addressing the issues set forth above no later than October 10, 2014.
2. Defendant shall submit a reply brief no later than October 17, 2014.

DATED September 30, 2014.

BY THE COURT:

S/ F.A. Gossett
United States Magistrate Judge